137

SOUTHERN CIRCLE OFFICE WORKING PLANS PARTY II

Inward No. [illegible] Date [illegible] WORKING PLANS PARTY II S.D.

RECORDS.

1. (1) Every answer to a petition should contain so much of the points of a case as is necessary to enable the superior officers in case of appeal to form a judgment whether to accept or reject the petition of appeal.

(2) When the order of a subordinate is reversed or modified, the reasons are to be communicated to the subordinate. When the order is confirmed, a simple intimation to that effect will suffice.

(3) The petitioner is also to be informed.

(G. R., F. D., No. 561, dated 27th April 1870.)

2. In suits to which Government is not a party, the Collector of Bombay is not bound, or compellable, to allow the records of his office to be searched by the parties to the suit for the purpose of ascertaining whether these records contain documents which may be useful to them. Where documents are known to exist in those records and can be specifically described, the Collector may be compelled to produce them under a *subpœna duces tecum* unless they are privileged; and in all cases in which production can be so compelled, the Collector should give inspection and copies if asked, charging reasonable fees for the same.

It frequently happens, however, that parties are unable specifically to describe documents, though they may have just reason to believe that such documents exist and are to be found in the Collector's Office. In such cases when the Collector is satisfied that the documents sought would, if produced, be material to the case of the applicant, the Collector should allow his records to be searched, for "it is the anxious desire of Government to further the ends of justice" (see Government Resolutions Nos. 565, dated 3rd February 1846, and 6400, dated 29th August 1850). The records of the Collector frequently contain the only reliable documentary evidence of title to lands in Bombay; and it would be unjust to close them against a man whose title was impeached, simply because he was unable to point out, by date and description, the particular documents he required. Such search, however, should only be granted when the Collector is satisfied that the application is made *bonâ fide*, and should be conducted by or under the inspection of the Collector's own officers for whose attendance he should make a sufficient charge. Otherwise the records might be tampered with or abstracted, and the object of Government in allowing the search entirely defeated.

In the Government Resolutions quoted above, it is declared to be the policy of Government to allow the production of documents on its records, "which though compiled for the use of Government are nevertheless resorted to as the common evidence of the private rights of the district, or of the mutual and relative rights of Government and individuals,

such as registers, survey maps," &c. Of such documents, the Collector should also allow inspection in his office, on such reasonable terms as he may think fit. Indeed wherever production can be compelled under a *subpœna duces tecum*, the Collector would find it a safe and convenient rule to give preliminary inspection, as the result of such inspection will frequently be to diminish the number of documents required to be produced.

Under Section 77 of the Indian Evidence Act, certified copies may be produced in proof of the contents of public documents, and the Collector's records are public documents under Section 74 of the Act. In many cases a copy is as satisfactory evidence as the original; and in such cases, the Collector might well require parties to dispense with production of the originals in Court and to take certified copies. In some cases, however, there are particularities about the original which cannot be shown on a copy; and in such cases the originals should be produced in Courts.

The Evidence Act I of 1872 contains several important sections with regard to public documents. Section 76 requires that copies of public documents "which any person has a right to inspect" shall be given to that person, on payment of the legal fees therefor. It is nowhere in the Act laid down what public documents any person has a right to inspect, but in Section 123 it is enacted that "no one shall be permitted to give any evidence derived from *unpublished official records* relating to any affairs of State except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit." In Section 124 it is provided that "no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure," and Section 162, under which a witness summoned to produce a document must, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production, does not empower the Court to inspect the document if it refers to matters of State. The head of the department, and not the Court, is thus made the judge, whether a public document is to be withheld on the ground that it relates to affairs of State. The Collector should, therefore, be careful, before allowing inspection or granting copies of documents from his records, to ascertain that the public interests are not likely to suffer by the disclosure. And in cases in which, though compelled to bring a document into Court, he considers it would be detrimental to the public service to produce it, he should attend personally to state his objection.

(Adv. Gen., No. 57, dated 30th August 1873; *vide* G. R. No. 5190, dated 16th September 1873.)

3. It is to be observed from the foregoing Resolution that it is the wish of Government that

no needless restrictions should be placed on the right of inspection of public documents. It would not be possible to define precisely what particular class of documents should be allowed to be inspected and copied, but in withholding permission the officer in charge of the records should be guided mainly by the consideration whether or not the public interests would suffer by the disclosure. As a general rule, permission to inspect a copy should not be withheld in all cases not affecting the public interests, in which had the application been made by a Court it could not have been refused. Thus, in addition to the documents referred to in Section* LXXXVII of Act VIII of 1871, parties to a suit should be allowed copies of depositions and other judicial documents which they may desire to produce in evidence. (G. R. No. 5487, dated 3rd October 1873.)†

* *Vide* Section 90 of the Indian Registration Act III of 1877.

4. If a Civil Court asks for the production in original of a public document, the officer in whose custody such document is, is at liberty to represent to such Court that its production will involve inconvenience (as in the case of a current register) and to offer to send a certified copy if the production of the original is not, in the opinion of the Court, necessary.

A public officer is only bound to furnish a certified copy, unless the original is called for by the Court (Section 76 of Act I of 1872), and the Court *shall presume* (*i.e.*, in the absence of evidence to the contrary) that such certified copy is genuine (Section 76 of Act I of 1872). But it by no means unfrequently happens that the genuineness of a certified copy is impugned or that the meaning of its contents can only be rightly gathered from a context too voluminous to be conveniently copied, or for other reasons, necessary in original.

In such cases a public officer cannot refuse to produce or cause the production of the original, if so ordered by a Court, unless of course it were protected under Sections 123 or 124, as relating to an affair of State or to communications made in official confidence.

(L. R. No. 87, dated 21st January 1889; *vide* G. R. No. 1479, dated 22nd February 1889.)

5. Under Section 171 of Act I of 1872, letters between district authorities are public documents forming a record of the acts of public authorities and as such receivable in evidence. The public generally have no right to inspect such documents, and certified copies thereof could not ordinarily be demanded under Section 76 of the Evidence Act.

23 W. R., 272.

† For rules for search, inspection and obtaining copies of maps, land registers and other records of the Bombay City Survey, and all records concerning the land or the land revenue under Section 40 of Act II of 1876, and for rules under Section 41 of the same Act regarding the production of the Bombay Collector's records into Court, *vide* G. N. dated 17th January 1877.

But they would be admissible in evidence and their production compellable by the Court in a suit against Government unless protected either—

(1) by Section 123 of Act I of 1872 as relating to affairs of State, on which point the decision of the head of the department concerned would be conclusive; or

(2) by Section 129 as expressly prepared for the instruction of the legal advisers of Government.

The expression "affairs of State" in Section 123 of the Evidence Act would not cover records or correspondence merely affecting the title of an individual to land.

(L. R. No. 970, dated 23rd June 1892; *vide* G. R. No. 5627, dated 9th July 1892.)

6. Except in the case of *unpublished* official records relating to affairs of State, which the officer at the head of the department concerned may withhold as such under Section 123 of the Evidence Act, 1872, the Court alone can decide as to the relevancy and admissibility of any document, the production of which is demanded in a suit—Section 162, Evidence Act, 1872. (L. R. No. 1526, dated 20th October 1892; *vide* G. R. No. 9607, dated 8th December 1892.)

7. No Royal Commission, no Parliamentary Committee, has "free access to the records of Government." The authority of Government to communicate or to withhold records and papers from Parliament is undoubted. Such a refusal does not entail want of confidence, but implies simply that Government are of opinion that a document is irrelevant or from its very nature intended for Government only. Commissions are appointed by Govment to institute an independent enquiry by examining witnesses, and by consulting records and such papers as Government may place at their disposal. They are not appointed to institute an enquiry into the actions or opinions of subordinate Government officers, concerning which orders have been passed by Government. Nowhere have any Government ever granted powers which would be tantamount to abdication and which would paralyse administration, because it is obvious that—in their official intercourse with Government—officers of Government frequently make communications which are intended *for Government only* and it would be, on the part of Government a gross breach of confidence to divulge such communications. (G. R. No. 1678, dated 3rd March 1886.)

8. His Excellency the Governor in Council is pleased to publish for general information the following rules for inspection, search or obtaining copies of documents from the records of the Secretariat:—

1. Every application for search, inspection and obtaining copies of or extracts from the Government records shall be made in writing on plain paper. The date of receipt shall be endorsed

upon the application as also shall be the number and date of the order of the Secretary granting the same and the dates on which the requisition was satisfied, and the amount of the fee received shall be duly recorded. The name of the person who conducted the search shall also be recorded in full.

2. Copies shall be given in accordance with Article 22, Schedule I of Act I of 1879, and Schedule I of Act VII of 1870.

3. A fee of Rs. 5 for each day will be charged in every case for search and inspection when permitted by Government. In no case will less than Rs. 5 be charged for search or inspection. The search will be conducted by clerks in the Department of the Secretariat concerned.

4. Each applicant will be required to pay a deposit of Rs. 20 before search and inspection of records are allowed.

5. For every copy of a document taken from the records a fee of one rupee will be charged as a comparing fee.

6. Copying fees at the rate of one anna for every 100 words or fraction of 100 words will be charged, but if the original is in a tabular form double this rate will be charged.

7. No search, inspection or copies of documents will be given in cases where it is considered that such a course would be prejudicial to the interests of Government.

(G. N. No. 2023, dated 14th March 1889.)

9. The best arrangement for the safe custody of reclamation and other leases granted in the several districts of minor importance is to keep them in the Collectors' safes. Printed lists of these leases should be sent to the General Record Room. In the case of more important leases which will fall in after ninety-nine years, greater precautions are necessary. These should all be printed, and authenticated copies should be kept in the Secretariat, Bombay, and at the Collectors' head-quarters. (G. Rs. Nos. 2351, dated 2nd May 1879, and 9991, dated 19th December 1884.)

10. The Collectors should forward to Government lists of leases granted in their respective districts since the date of Government Resolution No. 2351, dated 2nd May 1879, to be added to the lists previously printed. (G. R. No. 6827, dated 22nd August 1885.)

11. The officials, in whose custody public documents are, are responsible for their not being tampered with, and if any tampering is found to have occurred, they are bound to show that they were not privy to and had no concern in the matter, and are not responsible for what occurred. (G. R. No. 4334, dated 30th May 1884.)

12. It is essential that the greatest care should be taken of papers sent from the Alienation Office on loan to officers for reference, &c. With a view to avoid the possibility of such papers being lost or stolen when papers are received for reference from the Alienation Office, the officer receiving the same should give a receipt for the same, keep them always in his own custody and must personally see them packed for despatch so as to be sure of the contents of the parcel or packet, and all such parcels or packets should be invariably registered. In cases where the papers applied for are not lengthy, the Commissioner may use his discretion in supplying copies in lieu of sending the originals. (G. R. No. 7003, dated 29th August 1885.)

13. Government attach great importance to the systematic indexing of the records in the mofussil kacheris, and the Commissioners should see that this work is kept up to date in the districts under their charges. (G. R. No. 1220, dated 13th February 1889.)

14. It is of the utmost importance that the orders regarding the destruction of old and useless records should be carefully and regularly carried out, as useless papers not only take up a great deal of room, but if allowed to accumulate soon get beyond the power of the ordinary establishment to put them in order. The Commissioners on their tours should continue to see that no laxity is allowed in this respect. (G. R. No. 4491, dated 21st August 1874.)

15. Generally no documents in which the Accountant-General's office may be interested should be destroyed without the assent of that officer. (G. R. No. 3276, dated 21st June 1879.)

16. As regards the classification and destruction of papers of the Forest Department, Government are of opinion that papers classed A should be kept permanently and those classed B should be destroyed after varying periods. It would be easy to mark on the bundles of B papers the period after which they should be destroyed. Before, however, the papers classed B are destroyed, lists of such papers should be submitted to the Conservators of Forests or Deputy Conservator of Forests in charge of Circles for approval. (G. R. No. 8697, dated 7th November 1895.)

Note.—The revised lists of A and B papers prescribed in this Resolution have not been printed in this compilation.

17. Lists* of A and B Famine papers have been prescribed by G. R. No. 6309, dated 27th August 1889.

18. The list* of papers pertaining to the office of Collectors to be periodically destroyed has been sanctioned by Government Resolutions Nos. 8818, dated 9th November 1892, and 2828, dated 21st April 1893.

* Not printed.

19. Lists* of Táluka, Huzúr and Village A and B papers have been sanctioned in Government Resolution No. 3479, dated 20th April 1892, and a further revision of them has been ordered in Government Resolution No. 5921, dated 10th August 1897.

20. The list* of papers in the Vernacular Branch of the Divisional Commissioner's offices to be preserved and destroyed has been sanctioned by Government Resolution No. 6897, dated 7th September 1895.

21. With the object of enabling boys attending vernacular schools to learn to read vernacular handwriting, Mámlatdárs may supply on application by school masters of Government schools a number of B list papers, taking a receipted list thereof from the school masters, who shall be responsible for them, and on duly returning them, can have a fresh supply of such papers. Care should, however, be taken that no *records* (of the A list) that are to be kept are allowed to leave the Mámlatdárs' kacheris, and that all B papers lent are carefully returned. (G. Rs. Nos. 2643, dated 22nd May 1878, and 3099, dated 19th June 1878.)

22. Masters of registered indigenous schools should be furnished by Mámlatdárs with B list papers through the kulkarnis of the villages in which the schools are situated, care, however, being taken that no records of A list papers are allowed to leave the Mámlatdárs' kacheris. (G. Rs. Nos. 7004, dated 2nd September, and 7986, dated 9th October 1884.)

23. It is essential that waste paper in Government offices should be so disposed of as to reduce to a minimum the risk of fire from its being allowed to accumulate. For this purpose it should either be collected and burnt daily by the office peons or stored in iron bins till removed. Where it is probable that the proceeds of the sale of the paper will cover the cost of the bins, the latter course should be adopted. (G. R., P. W. D., No. 295A-1037, dated 27th July 1897.)

24. The proceeds of the sale of waste paper must be credited to Government, and all charges connected with the preservation of records should be duly provided for in the budget. (G. R. No. 889, dated 22nd February 1871.)

25. Papers filed under Acts XIX of 1857, X of 1866 and VI of 1882, of such companies as have become defunct or been dissolved for over five years should be destroyed, subject only to such special direction, if any, as might be made at the time of the winding up of any company regarding the disposal of their papers under the first clause of Section 199 of the Indian Companies Act. (G. R. No. 4711, dated 20th July 1898.)

---

* Not printed.

Note.—It is not intended that daftars already sorted and classed according to the old list should be resorted according to the new, but that the revised classing should apply only to records which had not already been sorted.

(G. R. No. 4645, dated 28th June 1893.)